

**SUPPLEMENTAL  
DEPOSITION OF H.H. ROBERTS**

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

DAVID DAVIS,

Plaintiff,

A rectangular stamp with the word "COPY" in bold, uppercase letters. To the left of the word is a small square containing the letter "C".

vs.

CASE NO. 3:06-CV-0054-VPM

CITY OF PHENIX CITY, ALABAMA,

et al.,

Defendants.

\* \* \* \* \*

DEPOSITION OF H.H. ROBERTS, taken pursuant to  
stipulation and agreement before Shannon M.  
Williams, Certified Court Reporter and Commissioner  
for the State of Alabama at Large, in the offices of  
City Hall, 601 12th Street, Phenix City, Alabama, on  
Tuesday, November 6, 2007, commencing at  
approximately 11:16 a.m. EST.

\* \* \* \* \*

APPEARANCES

FOR THE PLAINTIFF:

THOMAS A. WOODLEY  
Woodley & McGillivary  
1125 15th Street N.W.  
Suite 400  
Washington, D.C. 20005

FOR THE DEFENDANTS:

JAMES P. GRAHAM, JR.  
712 13th Street  
P.O. Box 3380  
Phenix City, Alabama 36868-3380

JAMES R. MCKOON, JR.  
McKoon & Associates  
925 Broad Street  
P.O. Box 3220  
Phenix City, Alabama 36868-3220

ALSO PRESENT:

Cole Dugan  
David Davis  
Wallace Hunter

EXAMINATION INDEX

BY MR. WOODLEY	4
BY MR. MCKOON	45

## 1 STIPULATIONS

2 It is hereby stipulated and agreed by and  
3 between counsel representing the parties that the  
4 deposition of H.H. ROBERTS is taken pursuant to the  
5 Federal Rules of Civil Procedure and that said  
6 deposition may be taken before Shannon M. Williams,  
7 Certified Court Reporter and Commissioner for the  
8 State of Alabama at Large, without the formality of  
9 a commission; that objections to questions other  
10 than objections as to the form of the questions need  
11 not be made at this time but may be reserved for a  
12 ruling at such time as the deposition may be offered  
13 in evidence or used for any other purpose as  
14 provided for by the Federal Rules of Civil  
15 Procedure.

16 It is further stipulated and agreed by and  
17 between counsel representing the parties in this  
18 case that said deposition may be introduced at the  
19 trial of this case or used in any manner by either  
20 party hereto provided for by the Federal Rules of  
21 Civil Procedure.

22 \* \* \* \* \*



1 H.H. ROBERTS

2 The witness, having first been duly sworn  
3 or affirmed to speak the truth, the whole truth and  
4 nothing but the truth, testified as follows:

5 EXAMINATION

6 BY MR. WOODLEY:

7 Q. Mr. Roberts, I think you know by now, my  
8 name is Tom Woodley. I'm counsel for Mr. David  
9 Davis in this lawsuit against the city, Chief  
10 Hunter, and yourself. You're aware of that?

11 A. I'm aware of that.

12 Q. And you had your deposition taken earlier  
13 in this case, correct?

14 A. I have.

15 Q. Let me go through a couple of preliminaries  
16 just to make sure we're still on the same  
17 wavelength. You've now been placed under oath again  
18 so you're obligated to tell the complete and full  
19 truth. Do you understand that?

20 A. I understand.

21 Q. If at any time you don't understand or hear  
22 one of my questions, please stop me immediately and  
23 I will be more than happy to rephrase or repeat that  
24 question to ensure that you do, in fact, understand  
25 my question. Do you understand that?

1 A. I understand.

2 Q. You have to wait until I finish my question  
3 before you begin your answer so that this  
4 distinguished court reporter can take down all of  
5 the words that we say today. Do you understand  
6 that?

7 A. I understand.

8 Q. Is there any reason today, medication or  
9 otherwise, that you might be in any way impaired in  
10 understanding my question and responding to my  
11 questions?

12 A. No.

13 Q. Okay. Let me invite your attention to the  
14 binder of exhibits which you have in front of you.  
15 And Mr. McKoon has a full set of these exhibits as  
16 well. Exhibit Number 1 is the notice of depositions  
17 that we served concerning this round of depositions  
18 in the case. And you have been designated as the  
19 city's Rule 30(b)(6) witness to give knowledgeable  
20 and informed testimony in certain subject matter  
21 areas. Are you aware of that?

22 A. I'm aware of that.

23 Q. Let me invite your attention to page 2 of  
24 the Notice of Deposition. Paragraph one is an area  
25 where you have been designated as a Rule 30(b)(6)

1 witness for the city, and that states as follows:  
2 "All actions, agendas, minutes, notes, notices,  
3 memoranda, summaries, correspondence, media reports,  
4 e-mails, and other documents which relate in any way  
5 to city employees that have addressed or spoken to  
6 city council members in any public meetings or  
7 conferences of the city council for the period  
8 January 1, 2001 to the present."

9 See where it says that?

10 A. I do.

11 Q. Are you prepared today to give testimony on  
12 that subject?

13 A. I am.

14 Q. Paragraph two states as follows: "All  
15 actions, memoranda, correspondence, e-mails, notes,  
16 notices, media reports, and other documents which  
17 relate in any way to any communications in writing  
18 or verbal that any city employees have had with city  
19 council members outside of public meetings for the  
20 period January 1, 2001 to the present."

21 See where it says that?

22 A. I do.

23 Q. Are you prepared to give testimony on that  
24 subject as well?

25 A. I am.

1 Q. Going to paragraph four, it provides as  
2 follows: "All actions, memoranda, correspondence,  
3 e-mails, notes, notices, grievances, warnings,  
4 counseling forms, reprimands, disciplinary actions,  
5 and other documents which relate in any way to the  
6 adoption, implementation, application and  
7 enforcement of Section 2.054 of the city's merit  
8 system rules and regulations."

9 Do you see where it says that?

10 A. I do.

11 Q. And are you also prepared to give testimony  
12 on that subject?

13 A. I am.

14 Q. Paragraph seven: "All facts, memoranda,  
15 correspondence, e-mails, notes, notices, and other  
16 documents which relate in any way to information  
17 obtained by defendant H.H. Roberts that the  
18 plaintiff and other city employees have the  
19 constitutional First Amendment right of free  
20 expression."

21 Do you see where it says that?

22 A. I do.

23 Q. Are you prepared to give testimony on that  
24 subject as well?

25 A. I am.



1 Q. And lastly, paragraph eight: "All facts,  
2 memoranda, correspondence, e-mails, notes, notices,  
3 and other documents which relate in any way to  
4 information obtained by defendant H.H. Roberts that  
5 the plaintiff and other city employees have the  
6 constitutional First Amendment right of free  
7 association."

8 See where it says that?

9 A. I do.

10 Q. Are you prepared to give knowledgeable and  
11 authoritative testimony --

12 A. I am.

13 Q. -- on behalf of the city on that subject as  
14 well?

15 A. I am.

16 Q. Chief Roberts, I'm kind of curious, do you  
17 use a computer?

18 A. I do.

19 Q. Do you use e-mails?

20 A. I do.

21 Q. Have you done that for years?

22 A. Pretty good length of time.

23 Q. Okay. And refresh my recollection. When  
24 were you appointed or selected as city manager for  
25 the Phenix City jurisdiction?

1 A. 2001.

2 Q. So you've been city manager for the last  
3 six-plus years?

4 A. Six years and one month.

5 Q. And do you, on occasion, send and receive  
6 e-mails to other department heads concerning city  
7 business?

8 A. Occasionally.

9 Q. Okay. Do you recall, in connection with  
10 the newspaper article that came out in September  
11 2005, which is Exhibit 14 if you want to take a look  
12 at that. And again, just for the Record, this is  
13 that newspaper article in which Mr. Davis and a  
14 number of other firefighters were interviewed and  
15 quoted concerning issues affecting the city's fire  
16 department.

17 Do you recall, after you were aware of that  
18 newspaper article, that you sent any e-mails or  
19 memoranda to the chief of the fire department or  
20 anyone else in the city about this newspaper  
21 article?

22 A. I don't recall right off the top of my  
23 head. I would be willing to look at any that you  
24 might have.

25 Q. So it's possible that e-mails could exist



1 on this subject?

2 A. Not to my knowledge. I do not remember  
3 sending one.

4 Q. Have you been asked by anyone, including  
5 the city attorneys in this case, to look back  
6 through your e-mails to see whether or not there  
7 were any e-mail communications either sent by you or  
8 received by you concerning this newspaper article?

9 A. Only through the city attorneys.

10 Q. I don't understand your response.

11 A. They are the only ones that asked me to  
12 review and get the criteria that y'all had  
13 requested.

14 Q. Okay. But were you specifically asked to  
15 look at your e-mail?

16 A. All e-mails, sir, is what I was asked to  
17 look at.

18 Q. And no e-mails, as far as I know, have been  
19 produced in this case. So does that mean that there  
20 were no e-mails when you reviewed concerning the  
21 subject of this newspaper article?

22 A. I did not recover any.

23 Q. Did you, in fact, look?

24 A. The city clerk looked, sir.

25 Q. Okay. Same questions with regard to the

1 incident of the discharge of Mr. Davis which  
2 occurred in April of 2006. And I'm sure you'll  
3 remember that he apparently spoke to the mayor,  
4 Mayor Hardin; and as a result of that, at least in  
5 part, he was a few days later terminated. You're  
6 aware of that, right?

7 A. I'm aware he was terminated.

8 Q. Okay. Were there any e-mails that you sent  
9 or received from anyone concerning his communication  
10 with the mayor, the investigation of the situation,  
11 and his eventual discharge?

12 A. Not to my knowledge.

13 Q. And have you looked to see if you had  
14 received or sent any e-mails on that subject?

15 A. I have not received any. Neither have I  
16 sent any.

17 Q. But have you looked to see if there were,  
18 in fact, any?

19 A. As I stated earlier, the city clerk was  
20 requested to gather this information, and that's the  
21 point of contact that put the information together,  
22 sir.

23 Q. Who is city clerk?

24 A. Martha Harris.

25 Q. And how did she look whether or not there

1 were any e-mails on these subjects?

2 A. Sir, that's a question that you would have  
3 to ask her.

4 Q. You're not aware of how she did it?

5 A. No, sir, I am not.

6 Q. Did she go into your computer or hard drive  
7 or did somebody else do that?

8 A. It's possible she could have had the IT  
9 director to do that, sir.

10 Q. But are you specifically knowledgeable and  
11 aware that she made a good faith effort to see if  
12 there were any e-mails and came up with zero?

13 A. I'm confident Ms. Harris did her job.

14 Q. Do you know whether or not you had any  
15 interoffice memoranda or any written papers going to  
16 Chief Hunter or the HR director, Mrs. Goodwin,  
17 concerning the newspaper article in September 2005  
18 and the discharge of Mr. Davis in April 2006?

19 A. Not that I know of.

20 Q. So as far as you know, all of the documents  
21 that are relevant to these issues in this lawsuit  
22 have been produced?

23 A. All of the documents that I know of have  
24 been produced to you.

25 Q. Let me invite your attention, Mr. Roberts,

1 to Exhibit 35. This is a memo from Assistant Chief  
2 Hanson to Chief Hunter dated September 21, 2005, and  
3 it's regarding the verbal counseling with D.E.  
4 Karl -- with a K -- Taylorson. And this concerns  
5 that newspaper article in September 2005 which you  
6 just looked at. Have you seen this document, this  
7 memo, before today?

8 A. I read this memo, yes, sir.

9 Q. Okay. Concerning the substance of this  
10 memo, do you agree with the substance, or is there  
11 anything in here which you would disagree with or  
12 take exception to? And as I said with Chief Hunter,  
13 when I ask you to look at a document, take all the  
14 time you need, Mr. Roberts, before you respond to my  
15 questions.

16 A. Now restate your question.

17 Q. Now that you have had a chance to read  
18 through and review this memorandum, Exhibit 35, is  
19 there anything contained in here that you disagree  
20 with or take exception to?

21 A. No, sir.

22 Q. Okay. You'll see in the second sentence of  
23 this memo it says as follows: "The statements  
24 issued during this interview by personnel to the  
25 news reporter were done in complete conflict of the



1 Phenix City employees merit system (Section 2.054 -  
2 free speech)."

3 Do you see where it says that?

4 A. I do.

5 Q. And do you agree with that? In other  
6 words, that the comments made by Mr. Davis and the  
7 firefighters in that newspaper article on September  
8 2005 were in complete conflict with that section of  
9 the merit system rules and regulations?

10 A. I would have to agree with that.

11 Q. Do you recall if any comments or quotes  
12 they made in that newspaper article were not in  
13 conflict with the merit system rules and  
14 regulations, Section 2.054?

15 A. I would have to reread it. I do not know  
16 that answer.

17 Q. Okay. Again, it's Exhibit 14 if you want  
18 to reference it, Mr. Roberts, but maybe to shorten  
19 up the questioning and answering, Mr. Davis and the  
20 other firefighters talked about staffing concerns in  
21 the fire department, so their discussion and  
22 quotations, particularly of Mr. Davis on staffing,  
23 would that have been in conflict with Section 2.054  
24 of the merit system rules and regulations?

25 A. Yes, sir.

1 Q. And there was also a comment by Mr. Davis,  
2 and I believe other firefighters, in that newspaper  
3 article about poor employee morale in the fire  
4 department. Would that subject also be in conflict  
5 with the merit system rules and regulations?

6 A. I feel it would.

7 Q. Now, is it your position that before a  
8 firefighter can speak with the media about issues --  
9 any issues affecting the fire department, that the  
10 firefighter has to pursue the chain of command and  
11 get prior permission before talking to the media?

12 A. Yes.

13 Q. And is that true with regard to issues of  
14 staffing in the fire department, recruitment in the  
15 fire department, training in the fire department,  
16 adequate protective gear and apparatus in the fire  
17 department, dispatching procedures, response times  
18 in the fire department? Are all of those subjects  
19 that the firefighter would have to get prior  
20 clearance through the chain of command in the city  
21 before he or she could speak on those issues to a  
22 media representative?

23 A. Yes, sir.

24 Q. Other than Mr. Davis, has anyone in the  
25 fire department, to your knowledge, been disciplined



1 for speaking to the media about fire department  
2 issues?

3 A. I don't -- I do not know the answer.

4 MR. MCKOON: Wait a minute. I'm going to  
5 object because I'm not sure he was, but just  
6 for the Record.

7 Q. Let me broaden the question. Do you know  
8 of any firefighters who have been disciplined for  
9 speaking to the media?

10 A. Not to my knowledge, I do not.

11 Q. Later on in this Exhibit 35, the memo again  
12 from Assistant Chief Hanson to Chief Hunter which  
13 you have in front of you, it says in the second  
14 paragraph, second sentence: "These guidelines are  
15 to be followed by everyone employed by the City of  
16 Phenix City."

17 Is that an accurate statement?

18 A. That is accurate.

19 Q. And then the next sentence says "he",  
20 referring to Mr. Taylorson, had -- and, again, the  
21 word not has been inadvertently dropped. I think we  
22 had an understanding with Mr. McKoon --

23 MR. MCKOON: That is correct.

24 Q. -- that the word "not" should be inserted  
25 there so it would say properly as follows: "He had

1 not received nor requested permission from any fire  
2 department supervisors to speak with a member of the  
3 news media concerning issues within the fire  
4 department."

5 Is that an accurate statement, Mr. Roberts?

6 A. To the best of my knowledge, it is  
7 accurate.

8 Q. Now, as the city manager, these are called  
9 counseling forms. Do you consider this to be at  
10 least a mild form of a reprimand or discipline?

11 A. It's a form that the merit system allows to  
12 be put under, I believe it's a Class I, where you  
13 have a counseling form and it goes into the  
14 personnel folder.

15 Q. My question really is, is this sort of the  
16 first stage or mild form of discipline or reprimand?

17 A. It's a very mild form.

18 Q. Would you consider it a reprimand?

19 A. I would consider it a counseling statement.

20 Q. But apparently they are inserted, as  
21 Mr. Taylorson's was, in their personnel file,  
22 correct?

23 A. That is -- yes, sir.

24 Q. And what is the purpose of putting it in  
25 the personnel file?

1 A. That's by merit system rules and  
2 regulations.

3 Q. Is it then to be used possibly for future  
4 reference in the event that the same individual  
5 might have some future discipline?

6 A. It could be used.

7 Q. And have these counseling forms been used  
8 for further discipline down the road for the  
9 individual?

10 A. I'm sure they have.

11 Q. In the last sentence here, Assistant Chief  
12 Hanson is telling Chief Hunter that "I advised  
13 him" -- again referring to Mr. Taylorson -- "I  
14 advised him that the city would not put up with  
15 another episode of speaking to the media without  
16 prior approval."

17 As far as you know, is that a correct  
18 statement?

19 A. From reading it, I would say it's a correct  
20 statement, but I do not know the intent of Assistant  
21 Chief Hanson.

22 Q. With regard to that newspaper article,  
23 again in September of 2005, let me ask you this  
24 question: If Mr. Davis or the other eight or nine  
25 firefighters who were interviewed by the newspaper

1 reporter in that article had, in fact, requested  
2 prior permission through the chain of command up to  
3 your level as the city manager, would you have given  
4 your okay?

5 A. I would feel -- and this is going to be an  
6 explanation -- first, I would have to look at the  
7 substance and if I felt like it was of concern and  
8 of good intent, then I would forward it to the city  
9 council.

10 Q. You would what?

11 A. Forward it to the city council. And at  
12 that time, they would have the opportunity to voice  
13 their concern to the city council. And then  
14 probably from there, the city council would give the  
15 okay or could give the okay.

16 Q. To the firefighter as to whether he could  
17 speak to the media?

18 A. That is correct.

19 Q. Has that procedure ever been followed?

20 A. Not to my knowledge.

21 Q. Well, going back to this newspaper article,  
22 Exhibit 14, reading through the subjects that were  
23 addressed by Mr. Davis and other firefighters, they  
24 covered their concerns about what they felt was  
25 understaffing in the fire department and low



1 employee morale in the fire department, among other  
2 issues.

3 Would those have been subjects that you would  
4 have felt it was okay for them to speak to the media  
5 about?

6 A. They would have been subjects that I would  
7 have been happy to discuss with them and carry to  
8 the council if they felt the need to go there first.

9 Q. And then I take it you would let the  
10 council make that decision whether or not they would  
11 be permitted to talk to the media about those  
12 issues?

13 A. That is correct, yes, sir.

14 Q. Now, some of these firefighters mentioned  
15 in this newspaper article that they were fearful of  
16 retaliation for speaking to the media about these  
17 issues. Are you aware of that?

18 A. No, sir, I'm not.

19 Q. You don't have any reason to know why  
20 someone might have been fearful of retaliation?

21 A. I do not.

22 Q. In this article, Council Member Ray Bush  
23 indicates that he apparently, in the past, attempted  
24 to be a mediator with many of the firefighters in  
25 the city about these issues of concern. Are you

1 aware of that?

2 A. I read that in the article, sir.

3 Q. Did you participate in discussions with  
4 Council Member Bush about that subject?

5 A. Not to my knowledge, no, sir.

6 Q. Now, let me invite your attention to  
7 Exhibit 3, which is the city grievance procedure.  
8 And I know from your earlier deposition testimony  
9 that you are very familiar with this section of the  
10 merit system rules and regulations, which is Section  
11 15.02 concerning the subject of employee complaints  
12 and grievances. Is it your position that before  
13 Mr. Davis and other firefighters spoke to the  
14 newspaper reporter with the resulting article in  
15 September 2005, that they should have first pursued  
16 this grievance procedure concerning the issues that  
17 they addressed?

18 A. I do.

19 Q. Did you want to add to that?

20 A. There's two forms -- two roadways that they  
21 can travel.

22 Q. What are they?

23 A. One is the grievance procedure. And then,  
24 of course, they have their own SOPs that they can  
25 follow.



1 Q. That would be before they address the media  
2 on issues. Is that what you mean?

3 A. The media or council, yes, sir.

4 Q. Or city council?

5 A. Yes, sir.

6 Q. But as I read the language in Section  
7 15.023 of the merit system rules and regulations, it  
8 says -- you may want to look at this subparagraph  
9 D -- at the end of the grievance procedure, it says  
10 "the decision of city manager shall be final and the  
11 employee shall have no further rights of  
12 administrative appeal."

13 Do you see where it says that?

14 A. I do.

15 Q. And is that an accurate statement that  
16 you're the end of the road in terms of the grievance  
17 procedure?

18 A. It is as far as the grievance procedure  
19 with the fire department and police department or  
20 the code enforcement officers. However, the SOPs --  
21 they have the ultimate ability to get to the council  
22 through SOPs, which will give them another route,  
23 another step.

24 Q. Now, I'm trying to understand the scope,  
25 either broad or narrow, of the grievance process.